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December 16, 1999

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Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW – Portals
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

RE: Application by New York Telephone Company (d/b/a Bell Atlantic – New York), *et al.*, for Authorization To Provide In-Region, InterLATA Services in New York, Docket No. 99-295

Dear Ms. Salas:

This letter provides information requested by the Commission's staff that is responsive to certain issues raised by a few commenters in the above-captioned proceeding.

As Bell Atlantic previously demonstrated -- and contrary to the claims of certain CLECs in recent *ex partes* -- Bell Atlantic is providing non-discriminatory access to unbundled loops, including loops for use to provide xDSL services. As a result, Bell Atlantic is in compliance with the checklist requirements today, and should be allowed to provide long distance service in New York today.

In addition, there are several mechanisms in place that provide abundant assurances that Bell Atlantic will remain compliant in the future and continue to improve its performance further still.

I. Bell Atlantic is providing non-discriminatory access to unbundled loops. As previously explained, provisioning DSL loops is still a relatively new process for both Bell Atlantic and CLECs alike, and both parties are still refining their respective processes. Despite this fact, Bell Atlantic is provisioning DSL loops at parity with the most closely analogous retail services. Bell Atlantic is also working cooperatively with the CLECs to improve and refine the provisioning process -- both by addressing areas where Bell Atlantic's performance can be improved and to resolve what the New York Public Service Commission has described as "shortcomings" in the CLECs' own processes.

A. Some CLECs argue that the obligation to provide DSL loops is not new, but rather has existed since 1996. Bell Atlantic did include provisions for DSL loops in its interconnection agreements as early as 1996. But it wasn't until last fall that CLECs started marketing DSL service in New York. The implementation of DSL loop processes is therefore new for both Bell Atlantic and the CLECs. In fact, the Pre-Filing Statement that Bell Atlantic developed in cooperation with the CLECs, the Department of Justice and the

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New York Public Service Commission and submitted on April 6, 1998, does not even mention DSL loops. In response to that filing, the Department of Justice said it would support Bell Atlantic's long distance application if it "fully and properly implemented" the Pre-Filing Statement, without ever even mentioning DSL. *See* Letter from Joel I. Klein, U.S. Department of Justice, to John O'Mara, Chairman, New York Public Service Commission, at 1, 2 (Apr. 6, 1998).

Nonetheless, Bell Atlantic responded promptly to the CLECs' requests for DSL-compatible loops. In October 1998, Bell Atlantic announced the availability of ADSL-compatible loops in its CLEC Handbook. But CLECs did not begin ordering these loops until April 1999. Instead, they purchased digital Premium loops that were available under tariff in New York during 1998 and the beginning of 1999, and used these loops to provide DSL services.

Contrary to the claims of several CLECs, Bell Atlantic did not delay offering ADSL-compatible loops until it began offering its own ADSL service to residential and business customers. Bell Atlantic started offering ADSL service to its customers in New York on June 22, 1999 – fully 8 months after Bell Atlantic announced the availability of ADSL-compatible loops.

In fact, CLECs have a substantial head start offering DSL services in New York. At the time Bell Atlantic filed its Section 271 application, Bell Atlantic had provided 3,900 Premium and ADSL loops. By contrast, Bell Atlantic had provided ADSL services for its own customers on only about 1,000 lines.

In addition, Bell Atlantic has introduced additional offerings at the request of CLECs. For example, in May of 1999, Bell Atlantic introduced a standardized loop offering specifically designed for use to provide DSL services. Among other things, at the request of CLECs this offering includes a guarantee that the loop will remain on copper.

Bell Atlantic also provided loop conditioning services for CLECs that wanted to offer DSL services over loops longer than 18,000 feet. Bell Atlantic initially provided these services on an individual case basis. Bell Atlantic now provides a standardized offering of loop conditioning services. This standardized offering – which is reflected in tariffs on file with the New York PSC – was introduced in May 1999 and included fixed prices for removing load coils and bridge taps.

In March 1999 – three months before Bell Atlantic introduced its own ADSL service – Bell Atlantic began providing CLECs with access to an on-line database with information on loops that are ADSL-compatible. This database now includes information on loops in 90 percent of the central offices with collocation. Bell Atlantic is also responding to CLEC requests for additional information – including loop makeup information -- by reviewing its paper records and providing that information in as few as 48 to 72 hours.

B. Several CLECs have argued that Bell Atlantic is not meeting its checklist obligation to provide DSL loops. This argument is simply not true.

First, the checklist obligation is to provide loops and Bell Atlantic's overall loop performance is excellent. As of August 1999, Bell Atlantic provided nearly 200,000 loops, including more than 150,000 provided as part of platforms. *See* Application at 16. In July and August, when loop and platform orders reached what was at that time an all-time high, Bell Atlantic completed more than 99 percent of new orders on time. *See id.* at 17-18. In September, BA-NY added another 58,000 loops, including 5,000 stand-alone loops and 53,000 loops provided as part of network element platforms. Bell Atlantic Reply Comments at 6. And the numbers have continued to increase in size.

Second, even if one were to consider DSL loops separately (which comprise only a tiny fraction of the total number of unbundled loops provided in New York), Bell Atlantic is meeting its obligations. The stationary standard here is non-discrimination – not perfection – and Bell Atlantic's DSL loop performance is at parity. For purposes of a non-discrimination analysis, there are no retail services that are perfectly analogous to unbundled loops for use to provide DSL service. The most closely analogous retail service is special services circuits. They are closely analogous because both special services circuits and DSL loops are not connected to a switch and both require a dispatch for installation. Bell Atlantic is providing unbundled DSL loops in a shorter average interval than retail special services circuits. During August, September and October, the average completion interval for DSL loops was 8.0 days and for special circuits was 9.4 days. *See* Carrier to Carrier Reports (Dowell and Canny Decl. Att. D; Dowell and Canny Reply Decl. Att. C). Bell Atlantic's own ADSL service is not a good analogue to providing unbundled loops for DSL. This is so because Bell Atlantic's own service is provided over a working loop (with dial tone on the line for testing) without a dispatch to the customer premises, while an unbundled DSL loop must be provisioned on spare loop facilities (without dial tone) with a dispatch to the customer premises. Nonetheless, while it should be expected that the more complicated process of providing unbundled loops would take somewhat longer, Bell Atlantic's DSL loop performance is roughly comparable to its Bell Atlantic's own ADSL service. Application at 20; Lacouture/Troy Decl. ¶ 82.

While this showing above demonstrates checklist compliance, Bell Atlantic also has shown that the Commission's alternative standard – allowing competitors a meaningful opportunity to compete – is satisfied as well. CLECs are providing DSL service using loops from Bell Atlantic to twice as many customers as Bell Atlantic is providing with its own DSL service. Lacouture/Troy Rep. Decl. ¶ 73.

Third, Bell Atlantic is providing better service to CLECs offering DSL service than it provides for its own retail ADSL service in a number of respects. For example, Bell Atlantic provides DSL loops of any length to CLECs, even though it currently offers ADSL service on loops less than 12,000 feet (moving to 15,000 feet in several weeks). Bell Atlantic will also condition loops for CLECs and swap digital loop carrier and copper loops between two customers to make a DSL loop available to a CLEC. In addition, Bell Atlantic's loop qualification database provides CLECs with loop lengths on all unloaded loops, which Bell Atlantic does not use for its retail ADSL service.

Some CLECs have implied that Bell Atlantic's performance data should not be credited. But there is no reason to question the performance data submitted by Bell Atlantic. It is the same data that Bell Atlantic submitted to the New York Public Service Commission as an addendum to its Carrier to Carrier performance reports. Moreover, the DSL data were compiled in the same manner and collected from the same sources as are similar measures for other items that Bell Atlantic routinely includes in its Carrier to Carrier performance reports and that are relied on by the New York Public Service Commission to monitor performance.

Some CLECs claim that Bell Atlantic is measuring its performance intervals from the time it confirms an order, rather than from the time the order is submitted. These claims are completely untrue. The Carrier to Carrier Guidelines on Average Interval Completed state that the completion interval is the "average number of business days between order application date and actual work completion date. The application date is the date that a valid service request is received." *See Dowell/Canny Decl., Attachment B, Metric PR-2.* If the due date is changed because of Bell Atlantic, the order is counted as a miss and the interval is measured to the date the DSL loop is actually installed.¹

While some CLECs have claimed that their own data shows different results than are reported by Bell Atlantic, Bell Atlantic previously addressed the data submitted by CLECs and showed how they are unreliable. For example, Covad attempted to distort Bell Atlantic's DSL loop performance intervals by measuring the start of the interval from when Covad first

¹ On September 16, 1999, Bell Atlantic implemented a joint testing process that was developed cooperatively in the New York collaborative proceeding to enable CLECs to verify DSL loops are working when they are installed. Under this process, Bell Atlantic's technician and the CLEC's technician jointly test the DSL loop to determine if it is working properly. If the CLEC is satisfied that the loop has passed the test, it will provide Bell Atlantic a serial number for the DSL loop to acknowledge that the loop was provisioned to the CLEC's satisfaction. These orders are treated as completed on the date the CLEC provides the serial number. In some cases, Bell Atlantic reads the test results as indicating a pass, but the CLEC disagrees and refuses to provide a serial number. Bell Atlantic treats these orders as completed on that date and follows up with the CLEC to resolve the disagreement. In every such case, the follow up disclosed no problem with the loop. In a small number of cases, it is not possible to conduct a cooperative test at the time the installation is complete. Bell Atlantic follows up with the CLEC the next day to request that the CLEC test the loop. Once the CLEC verifies that the loop is working, Bell Atlantic scores the order as complete on the day Bell Atlantic installed the loop.

Prior to the implementation of the cooperative testing process, Bell Atlantic handled the completion of DSL loop orders just like any other loop order. On the day Bell Atlantic completed its installation work and successfully tested the loop back to Bell Atlantic's frame, Bell Atlantic scored the DSL loop order as completed. Bell Atlantic could not by itself test the DSL loop all the way back to the CLEC's equipment.

submitted an erroneous order, rather than from the date Covad submitted a corrected order. Lacouture/Troy Reply Decl. ¶ 85. Similarly, Covad attempts to inflate the number of loops that failed its testing by including tests on loops that were never installed because Bell Atlantic couldn't gain access to the customer premises. *Id.* ¶ 83.

Moreover, these CLECs are attempting to mislead the Commission by claiming without further explanation that Bell Atlantic's on-time performance for DSL loops is less than 50 percent. In fact, nearly 90 percent of DSL loop orders are completed on time or involve issues that are not within Bell Atlantic's control. During the first eight days of December 1999, 89 percent of DSL loop orders fell into one of the following three categories:

- Provisioned on time (33 percent).
- Could not be provisioned because the customer was not ready or Bell Atlantic could not gain access to the terminal (40 percent).
- Could not be provisioned because loop facilities were not available (16 percent).

Some parties have questioned why so many of the CLEC's customers are not be ready for installation of the loop or why Bell Atlantic may not be able to gain access to the network interface device ("NID") or terminal.² There are several reasons. First, Bell Atlantic may need to gain access to facilities within the customer's premises and the customer may not be home. Coordinating an installation appointment with the customer is particularly difficult for DSL loops because the CLEC that ordered the loop may have sold it to an Internet Service Provider who, in turn, has direct contact with the customer. As a result, the installation must be coordinated with four separate parties.

Second, even if the customer is at home, the customer may have failed to make arrangements for obtaining access to the NID or terminal. For example, many New York customers live in apartment buildings where the NID or terminal are located in a secured part of the building. In these situations, the customer must make arrangements with the landlord for Bell Atlantic's technician to gain access to those facilities.

Third, the customer may cancel the order before Bell Atlantic dispatches its technician or when Bell Atlantic arrives to install the DSL loop.

² When a Bell Atlantic technician is unable to install a DSL loop because the customer was not ready or the technician could not gain access to the loop facilities, the technician will make a contemporaneous notation in Bell Atlantic's Work Force Administration ("WFA") system. These WFA logs are used to prepare status reports for DSL loop orders. This is the same process used for their wholesale services to track and report the instances in which customers are not ready. Samples of Bell Atlantic's WFA logs and status reports are enclosed with this letter. These business records are confidential and are submitted in accordance with the protective order entered by the Commission in the above-captioned proceeding.

Finally, the customer may cancel the order because the customer (or the customer's Internet Service Provider) ordered DSL service from several different CLECs, but only wanted one DSL service. As a result, Bell Atlantic is forced to roll trucks to attempt to install several DSL loops for different CLECs to the same customer location where the customer wants only a single DSL loop.

It is not surprising that incidents of "customer not ready/no access" occur more frequently in New York. In the New York metro area, loop facilities, particularly NIDs and terminals, are located in secure areas to safeguard them from theft of dial tone services. When these facilities are in secure locations, the customer must make arrangements for Bell Atlantic's technician to gain access to them. In other geographic areas, loop facilities are not as often placed in secure locations and Bell Atlantic's technicians can more frequently access them without the customer making arrangements.

Because of the high number of "customer not ready/no access" incidents, a cooperative process was established during the New York collaborative. Under this process, Bell Atlantic's technician will call the CLEC from the field when access is not available at the premises. The CLEC will then provide a serial number to Bell Atlantic and attempt to contact the customer. This process also serves to notify the CLEC that these orders are in jeopardy.³

The second most common reason why Bell Atlantic cannot complete DSL loop orders is the lack of facilities. Because Bell Atlantic has deployed fiber extensively in its loop facilities, it is often difficult to find spare copper facilities necessary to provision a DSL loop. Even though there may be DSL-compatible loops running to the CLEC's customer's premises, they may all be in use for voice or other telecommunications service. But rather than reject the CLECs' orders for lack of facilities, Bell Atlantic goes the extra mile to find facilities to fill their orders. For example, if there is a defective copper pair running to the customer's premises, Bell Atlantic will attempt to clear the trouble on that pair in order to provision the DSL loop. These repair efforts, however, can take several days and may not be successful. In addition, Bell Atlantic will rearrange loop facilities –e.g., swap Digital Loop Carrier facilities and copper facilities between two customers – in order to make a DSL loop available for a CLEC.

The remaining orders fall principally into two categories. The first category includes orders that could not be provisioned because of a wiring problem in the central office.

³ Contrary to claims by Northpoint, Bell Atlantic does provide CLECs with notification of orders that are in jeopardy of not being completed on time. As explained at length in Bell Atlantic's prior filings, Bell Atlantic technicians make entries in the WFA system when they determine that an order will not be completed on time. Bell Atlantic scans the WFA system three times per day and updates the status of orders due that day on its secure server for access by CLECs. In the case of DSL loops, Bell Atlantic also provides CLECs a second notice on the following day of orders that could not be completed.

Approximately 10 percent of DSL orders are in this category. Some of the wiring problems are the CLECs' and some are Bell Atlantic's.

The second category includes DSL loop orders that were not provisioned because Bell Atlantic failed to dispatch a technician. Bell Atlantic discovered during the New York collaborative that too many orders were falling into this category. Bell Atlantic addressed this problem by adding 151 technicians in November to install DSL loops. As a result, Bell Atlantic reduced the DSL loop orders in this category from 12 percent to less than one percent.

Viewed in this more appropriate light, Bell Atlantic's DSL loop performance is very good and meets the requirements for parity.

In addition to satisfying the checklist requirements today, there are several reasons why Bell Atlantic will continue to do so in the future. There are several mechanisms in place to ensure that Bell Atlantic continues to comply with its obligations and to improve its performance in providing DSL loops.

First, Bell Atlantic is continuing to participate in collaborative proceedings in New York to develop process improvements on a cooperative basis. Bell Atlantic's performance in providing DSL loops is reviewed regularly during these proceedings. And as the New York Public Service Commission has pointed out, the collaboratives have also revealed shortcomings in the CLECs processes so that CLEC performance can be improved as well.

Second, Bell Atlantic will be subject to significant financial penalties if it fails to meet DSL loop performance standards under the Performance Assurance Plan.

Finally, although not required to do so, Bell Atlantic is moving its DSL services in New York to a separate affiliate. Establishing a separate affiliate for DSL services will further ensure that competing providers of such services continue to receive non-discriminatory access to services and facilities. This Commission previously concluded as much. In the context of the SBC/Ameritech merger, the Commission expressly held that establishing a separate affiliate "will provide a structural mechanism to ensure that competing providers of advanced services receive effective, nondiscriminatory access to the facilities and services . . . that are necessary to provide advanced services." SBC/Ameritech Order, ¶ 363. According to the Commission, "[b]ecause the merged firm's own separate advanced services affiliate will use the same processes as competitors, and pay an equivalent price for facilities and services," establishing a separate affiliate "ensure[s] a level playing field between SBC/Ameritech and its advanced services competitors." Id. The same is true here.

Bell Atlantic-NY also has independent business incentives to maintain and improve its performance in providing DSL loops. The principal competition for high-speed data services is cable modems, which currently serve most of the high-speed data market. Bell Atlantic-NY is much better off by gaining a wholesale DSL subscriber than it is by losing that subscriber altogether to a cable modem operator.

Moreover, Bell Atlantic today pays hundreds of millions of dollars in so-called "reciprocal compensation" on one-way calls to the Internet. It pays that money, however, only on switched connections to the Internet, not dedicated connections such as DSL. As a result, when a customer signs up for a competitor's DSL service, Bell Atlantic will no longer have to pay large reciprocal compensation fees for that customer's Internet usage.

Should you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,

Dee May 8/11

Enclosure

ATTACHMENT

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